

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 314 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JASWANT DHANJI MAKWANA

Appearance:

MR HH PATEL, ld.ADDL PUBLIC PROSECUTOR for appellant
MR BK JADAV for Respondent

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 22/01/2002

ORAL JUDGEMENT

In this appeal, the State of Gujarat has challenged the judgment and order dated 2.1.1992 passed by the learned Metropolitan Magistrate, Ahmedabad in Criminal Case No.2826 of 1987 acquitting the respondent accused for the offence punishable under Section 324 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

2. The incident in question has taken place at about 6.40 or 7.00 p.m. on 14.10.1987. It is the case of the prosecution that the complainant had returned at about 6 O'Clock in the evening from his job. At that time, his nephew Kanubhai informed him that the accused has taken Rs.2 from him, and he is not returning the same though demanded by him. The complainant, thereafter went to the house of the accused and asked him to return Rs.2/-. The accused refused to return the amount. A quarrel between the complainant and the accused thereafter had taken place. The complainant thereafter went to his house and after taking bath, he was standing on the Otta of his house. At that time, the accused all of a sudden came from behind and inflicted 3-4 knife blows on the complainant. The respondent accused inflicted 3-4 knife blows on the stomach as well as on the back portion and on the cheek of the complainant Piyushbhai. Many persons gathered there and the accused ran away. The complainant was taken to Sharadaben Hospital for treatment. The complaint was given to the police in the hospital itself. The police after making usual investigation in the case, arrested the accused and submitted the charge sheet against him. The learned Magistrate after appreciating the evidence on record, at the end of the trial, was of the opinion that the prosecution has failed to prove the charge levelled against the accused in view of the contradictory evidence on record. He, therefore, acquitted the accused.

3. Mr.H.H.Patel, ld.APP after inviting my attention to the evidence on record, submitted that the learned trial Magistrate has committed an error in acquitting the accused. Ld.APP submitted that inspite of certain discrepancies of the evidence of the complainant and other eye witnesses, the prosecution has successfully brought home the charge levelled against the accused. It was contended that there is no reason to discard the evidence of the injured complainant supported with medical evidence.

4. Mr.Jadav, learned Counsel appearing for the respondent accused has not remained present yesterday when the matter was called out. Even today also, he is not present when the matter is called out.

5. I have narrated the facts from the evidence of the complainant and therefore, it is not necessary for me to re-narrate the same version of the complainant. Nothing has been brought out by the defence in the cross examination. The complainant has denied the suggestion that he sustained injuries as he slipped in the bath room

and was dashed against the handle of the bucket. The complainant has admitted that his father was a witness in a murder case which had taken place 21 years prior to the present incident where the present accused was also an accused. He has also denied the suggestion that the accused was acquitted in that case. Thus, there is no effective cross-examination of the complainant on the question of allegations made by him, namely, that the accused gave blows with knife to the complainant. The medical evidence on record also supports the version of the complainant. Dr.Virendra Shah, PW6-Exh.12 found three injuries on the basis of the certificate issued by the Doctor on duty, i.e. Dr.Vijay. It may be stated that Dr.Vijay is not examined as he had gone to America. The certificate at Exh.13 produced in the instant case gives the details about the injuries sustained by the complainant. There are as many as three incised wound injuries on the stomach, left portion of the chest as well on the shoulder. According to Dr.Virendra Shah, the injuries are possible with knife. There is practically no cross examination of Dr.Shah.

6. The prosecution has also examined the mother of the complainant, Shantaben, Exh.7 and Kanubhai, nephew of the complainant, vide Exh.8 and the neighbour Pravinbhai, at Exh.16. All the aforesaid witnesses have witnessed the incident. They have supported the prosecution case on all material aspects. Their evidence has virtually remained consistent. There is no reason to discard their evidence. The learned trial Judge has not accepted the evidence of the prosecution witnesses considering it to be on extraneous grounds. As far as the complainant is concerned, the learned Judge has rejected his evidence on the ground that there are material contradictions in the complaint as well as in the evidence of the complainant. When he has stated giving of two blows with knife in the complaint, in his evidence, he has stated that when he received the first blow, he was trying to save himself and therefore, he sustained another blow on the left side of the back portion. The complainant has also not given details about the other witnesses who were present at the time, in the complaint. The complainant has stated in the complaint that he has seen the accused coming out from his house with knife, however, in his evidence, he has stated that the accused inflicted blows with knife from behind. The complainant has also given names of different persons in the complaint as well as in his examination-in-chief, who saved him. Thus, according to the learned trial Judge, the evidence of the complainant is required to be discarded. Similarly, the learned Judge has not accepted the evidence of Shantaben, mother

of the complainant on the ground that she has stated in her evidence that she followed the accused after the incident while that fact has not been mentioned in the complaint by the complainant. In the complaint, it is stated that the mother has intervened when the accused was inflicting knife blows. Likewise, the evidence of Kanubhai as well as Pravinbhai have not been accepted by the learned trial Judge on the ground that their names are not mentioned in the complaint.

7. After having minutely gone through the reasoning of the learned trial Judge, I am of the opinion that the learned trial Judge has unnecessarily given too much importance to the minor discrepancies in the evidence of the prosecution witnesses. The learned Judge has totally ignored the incident having taken place which is not at all in dispute. The injury on the person of the complainant is in conformity with the medical evidence. Certain discrepancies in the evidence of the prosecution witnesses are bound to be there. Whether those discrepancies have any bearing in deciding the case is the question to be decided. Unfortunately, the learned trial Judge has totally overlooked the same and has misdirected himself by ignoring the fact that the incident infact has taken place and that the complainant has sustained injury. Merely because certain facts are not stated in the complaint, one just cannot come to the conclusion that all the prosecution witnesses have no respect to truth. Even by ignoring the evidence of other eye witnesses, the conviction can be based on the sole testimony of the injured complainant in the instant case.

8. I am conscious of the fact that this being an acquittal appeal, even if two views are possible, normally, this Court will not interfere by converting acquittal into conviction and that too, after a lapse of so many years. However, considering the facts and circumstances of the case stated hereinabove, I am of the opinion that no two views are possible in the instant case especially when the learned Judge has committed an error in discarding the evidence of the prosecution witnesses including the complainant on flimsy grounds, there is no option, but to convict the respondent. As the incident had taken place way back on 14.10.1987 and that the accused was acquitted on 2.1.1992, if the following order is passed, that would meet the ends of justice:

9. In the result, the appeal is allowed. The judgment and order dated 2.1.1992 passed by the Metropolitan Magistrate, Ahmedabad in Criminal Case No.

2826 of 1987 is set aside. The respondent is convicted for the offences punishable under Section 324 of the Indian Penal code and Section 135 of the Bombay Police Act. The respondent accused is ordered to pay a fine of Rs.2,000/- (Rupees Two thousand only), in default, to undergo rigorous imprisonment for six months for the offence punishable under Section 324 of the Indian Penal Code. No separate sentence is passed for the offence under Section 135 of the Bombay Police Act. The respondent accused shall deposit the said amount of Rs.2,000/- within a period of four weeks from today. In the event of depositing the said amount by the respondent, the learned trial Judge shall pay the same to the original complainant, namely, Piyushkumar Natwarlal Dangi on proper verification. The appeal is accordingly allowed.

(Kshitij R. Vyas, J.)

Sreeram.